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6                   UNITED STATES DISTRICT COURT  
7                   EASTERN DISTRICT OF WASHINGTON

8                   H. GAIDINE OGLESBEE,  
9                                 Plaintiff,  
10                                 v.  
11                   U.S. DEPARTMENT OF LABOR,  
12                                 *et al.*,  
13                                 Defendants.

NO. CV-08-5021-RHW

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS; DENYING  
PLAINTIFF'S MOTION FOR  
RECUSAL**

14                   On April 11, 2008, Plaintiff filed a 86-page Complaint against the U.S.  
15 Department of Labor (DOL, subagencies, divisions, branches and programs of  
16 DOL, individual employees of DOL, and subdivisions and employee of the U.S.  
17 Department of Health and Human Services (HHS) (Ct. Rec. 1). Plaintiff also filed  
18 over two-thousand pages of exhibits to accompany her Complaint (Ct. Rec. 2, 3).  
19 Plaintiff is proceeding *pro se*.

20                   On February 23, 2009, the Court granted Defendants' Motion to Dismiss,  
21 but permitted Plaintiff to file an Amended Complaint (Ct. Rec. 64). The Court  
22 instructed Plaintiff that the Amended Complaint must contain a short and plain  
23 statement that included:

24                   1.     The names of all persons or organizations that allegedly caused  
25                   or participated in causing damage to Plaintiff. Any person or  
organization against whom Plaintiff seeks relief in this matter shall be  
26                   named as a Defendant.

27                   2.     The approximate dates on which the allegedly injurious conduct  
took place, and an indication of whether the conduct is finished or  
28                   ongoing.

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1           3. The specific conduct or action Plaintiff alleges violated federal  
 2 or state law, and the identity of the actors that engaged in such  
 3 conduct.

4         *Id.*

5           The Court instructed that the Amended Complaint set forth the factual  
 6 allegations in separate number paragraphs pursuant to Fed. R. Civ. P. 10(b). The  
 7 Court warned that failure to file the Amended Complaint consistent with the Order  
 may result in dismissal of the action. *Id.*

8           On April 22, 2009, Plaintiff filed her Amended Complaint (captioned  
 9 “Revised Complaint”). The Revised Complaint contained 118 pages, along with  
 10 57 exhibits, totaling 1,967 pages. Defendants again moved for dismissal.

11          Additionally, on April 23, 2009, Plaintiff filed a Motion that was captioned,  
 12 Plaintiff’s Objection Declaration Notice Facts RE: Judge Whaley’s Abuse of  
 13 Discretion Acts and Errors in Law. The Court construes the motion as a motion for  
 14 recusal.<sup>1</sup>

15         **1. Defendants’ Motion to Dismiss Revised Complaint**

16          Defendants move to dismiss with prejudice Plaintiff’s revised complaint on  
 17 three basis: (1) for failure to comply with the Court’s order, pursuant to Fed. R.  
 18 Civ. P. 41(b); (2) for failure to meet the pleading standards within Fed. R. Civ. P.  
 19 8(a), and (3) for failure to state a claim under Fed. R. Civ. P. 12(b)(1).

20          The Supreme Court has interpreted “short and plain statement of the claim”  
 21 of Fed. R. Civ. P. 8(a) to require a Plaintiff to give the “defendant notice of what  
 22 the plaintiff’s claim is and the grounds upon which it rests.” *Bell Atlantic Corp v.*  
 23 *Twombly*, 550 U.S. 544, 570 (2007). The Court has further explained that detailed  
 24 factual allegations are not required but a showing of “grounds” calls for sufficient  
 25 factual allegations that are enough to raise a right to relief above the speculative

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27         <sup>1</sup>The Supreme Court has instructed that courts are to liberally construe  
 28 pleadings by *pro se* litigants. *Boag v. MacDougall*, 454 U.S. 364, 364 (1982).

1 level. *Id.* To survive a motion to dismiss, a complaint must contain sufficient  
 2 factual matter, accepted as true, to “state a claim to relief that is plausible on its  
 3 face.” *Id.* As recently explained by the Court, when reviewing legal conclusions,  
 4 courts need not accept as true all of the allegations contained in the complaint.  
 5 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). “Threadbare recitals of the  
 6 elements of a cause of action, supported by mere conclusory statements, do not  
 7 suffice.” *Id.*

8 Complaints that are so “verbose, confused, and redundant that its true  
 9 substance if any is well disguised” should be dismissed under Fed. R. Civ. P 8.  
 10 *Hearns v. San Bernardino Police Dep’t*, 530 F.3d 1124, 1130 (9<sup>th</sup> Cir. 2008) (*citing*  
 11 *Gillibeau v. City of Richmond* 417 F.2d 426, 431 (9<sup>th</sup> Cir. 1969)). However,  
 12 excessive length alone is not a sufficient basis for finding a violation of Fed. R.  
 13 Civ. P. 8(a). *Id.*

14 Pursuant to Fed. R. Civ. P. 41(b), a defendant may move to dismiss an action  
 15 if Plaintiff has failed to comply with a court order. In this case, the Court gave  
 16 specific instructions to Plaintiff in an effort to assist Plaintiff in compliance with  
 17 Fed. R. Civ. P. 8(a) and 10. The Court finds that Plaintiff’s revised complaint fails  
 18 to follow the Court’s directives and is in violation of Fed. R. Civ. P 8(a).  
 19 Plaintiff’s revised complaint fails to put Defendants on notice of the claim and the  
 20 grounds upon which they rests. Plaintiff fails to provide factual allegations that are  
 21 sufficient to raise a right to relief above a speculative level and instead makes a  
 22 myriad of conclusory statements. For instance, Plaintiff asserts that various torts  
 23 were committed without providing the factual allegations underlying the torts.

24 In determining whether dismissal under Fed. R. Civ. P. 41(b) is appropriate,  
 25 the Court considers five factors: (1) the public’s interest in expeditious resolution  
 26 of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to  
 27 the defendants; (4) the public policy favoring disposition of cases on their merits;  
 28 and (5) the availability of less drastic alternatives. *Yourish v. California Amplifier*,

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1 191 F.3d 983, 990 (9<sup>th</sup> Cir. 1999) (*quoting Hernandez v. City of El Monte*, 138 F.3d  
 2 393, 399 (9<sup>th</sup> Cir. 1988)). Dismissal is appropriate if four or more of these factors  
 3 support dismissal, or if three or more factors strongly support dismissal.

4 *Hernandez*, 138 F.3d at 399. “Dismissal is a harsh penalty and, therefore, it should  
 5 only be imposed in *extreme circumstances*.” *Ferdik v. Bonzelet*, 963 F.2d 1258,  
 6 1260 (9<sup>th</sup> Cir. 1992) (emphasis in original).

7 Here, the Court finds that each of the factors supports dismissal of the claim.  
 8 Plaintiff has been given ample opportunity to present her claims in a proper fashion  
 9 to permit both Defendant and the Court to respond and resolve the issues. Plaintiff  
 10 is not a stranger to filing complaints in the Eastern District of Washington, and  
 11 thus, she has had previous experience with the Local Rules and the Rules of  
 12 Federal Procedures. *See* CV-99-5035-EFS; CV-00-5012-EJL; and CV-00-5028-  
 13 RHW. Plaintiff has continued to submit pleadings that are excessive in length,  
 14 which increases the workload of the Court’s staff. Defendants would be prejudiced  
 15 by further lenience from the Court. Although the Court favors the disposition of a  
 16 case on the merits, in this case, it is an impossible task given that Defendants and  
 17 the Court are unable to determine the nature and scope of Plaintiff’s claims.  
 18 Ruling on the merits of undecipherable claims is virtually impossible.

19 In this case, Plaintiff’s Revised Complaint fails to meet the standards set  
 20 forth in Fed. R. Civ. P. 8(a). In doing so, Plaintiff violated the Court’s Order. As  
 21 such, dismissal is appropriate.

## 22 **2. Plaintiff’s Motion for Recusal**

23 Under 28 U.S.C. §§ 144, and 455 a plaintiff may ask the court to remove  
 24 itself from a particular action because of personal bias or prejudice concerning a  
 25 party.

26 Section 144 requires that the party timely submit an affidavit which states  
 27 the facts and the reasons for the belief that bias or prejudice exists. 18 U.S.C. §  
 28 144. An affidavit pursuant to this section is not legally sufficient unless it alleges

facts that fairly support the contention that the judge exhibits bias or prejudice towards a party that stems from an extra judicial source. *U.S. v. Sibla*, 624 F.2d 864 (9<sup>th</sup> Cir. 1980).

Section 455 is directed to judges and imposes a duty on the judge to disqualify himself where the judge has a personal bias or prejudice concerning a party. 28 U.S.C. § 455(b)(1). The test for personal bias in both § 144 and § 455 are essentially the same. *Sibla*, 624 F.2d 864, 867 (9<sup>th</sup> Cir. 1980).

Here, Plaintiff has failed to support her contention that this Court is biased or prejudiced against Plaintiff with evidence that stems from an extrajudicial source, and as such, it is legally insufficient as a matter of law. § 144. Moreover, there is nothing in the record to suggest that the Court has a personal bias or prejudice against Plaintiff.

**Accordingly, IT IS HEREBY ORDERED:**

1. Defendants' Motion to Dismiss Revised Complaint (Ct. Rec. 71) is  
**GRANTED.**

2. Plaintiff's Motion for Recusal (Ct. Rec. 68) is **DENIED**.

3. The above-captioned case is **dismissed** with prejudice.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order, forward copies to Plaintiff and counsel, and **close the file**.

**DATED** this 13<sup>th</sup> day of August, 2009.

s/Robert H. Whaley

ROBERT H. WHALEY  
Senior United States District Judge

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